

## **PART 5: CLEAN INDOOR AIR REGULATIONS**

### **§ 9-5-5-1 SHORT TITLE.**

Sections 9-5-5-1 et seq. may be cited as the "Albuquerque Clean Indoor Air Ordinance."

('74 Code, § 6-5-1) (Ord. 50-1988)

### **§ 9-5-5-2 LEGISLATIVE FINDINGS.**

(A) The Council finds the 1986 Surgeon General's Report concludes that tobacco smoke is a major contributor to indoor air pollution; that breathing secondhand smoke is a cause of disease, including lung cancer in healthy non-smokers, that separation of people and tobacco smoke within the same air space may reduce but does not eliminate exposure to environmental tobacco smoke.

(B) The Council further finds the 1986 Surgeon General's Report concludes that the risk of disease from environmental tobacco smoke is related to the level of exposure over time, and therefore, a reduction of smoke in City of Albuquerque buildings, public places and places of employment constitutes a public health priority.

(C) The Council further finds it necessary to restrict smoking in areas not covered by the 1985 New Mexico State Clean Indoor Air Act which calls for no smoking in state, city and county owned and leased buildings except in certain designated areas.

('74 Code, § 6-5-2) (Ord. 50-1988)

### **§ 9-5-5-3 PURPOSE.**

The purpose of §§ 9-5-5-1 et seq. is to:

(A) Recognize public health as a priority.

(B) Protect the public health and safety by regulating the burning of tobacco in city buildings, public places and places of employment.

('74 Code, § 6-5-3) (Ord. 50-1988)

### **§ 9-5-5-4 DEFINITIONS.**

For the purpose of §§ 9-5-5-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BAR.** Two types of premises qualify as a bar;

(1) **NON-RESTAURANT BARS.** A **NON-RESTAURANT BAR** consists of an area in which alcoholic beverages are served for consumption by guests on the premises and people under 21 years of age are not permitted in the bar, except as provided by the regulations of the Alcohol and Gaming Division of the State of New Mexico. Fifty percent or more of annual gross revenues from the entire non-restaurant bar premises shall be realized from the sale of alcoholic beverages in order to qualify as a non-restaurant bar. Non-restaurant bars shall not be connected to or located within any portion of a restaurant or on the same premises with a restaurant and shall include no dining area. Non-restaurant bars located in a building with other businesses shall have separate entrances and heating, ventilation and air conditioning systems (HVAC system) from such other businesses and shall be separated from all common passageways by solid walls that extend from the floor to the ceiling and solid doors that shall be closed when not in use. The operator, manager or owner of a non-restaurant bar may allow smoking in the non-restaurant bar.

(2) **RESTAURANT BARS.** A **RESTAURANT BAR** is an area in which alcoholic beverages are served for consumption by guests on the premises and is located in the same premises with a restaurant. The operator, manager or owner of a restaurant bar shall designate the restaurant bar area. Under no circumstances shall the designated restaurant bar area exceed in size the smokefree area in that restaurant. Moreover, the designated restaurant bar area shall not include the entry lobby, waiting areas, restrooms, or areas where minors may customarily congregate in that restaurant. The bar area shall be designated so that nonsmoking customers can receive all services provided by that restaurant without walking through the smoking area. To qualify as a restaurant bar fifty percent or more of annual gross revenues from the restaurant bar area shall be realized from the sale of alcoholic beverages. The operator, manager or owner of a restaurant bar may allow smoking in the restaurant bar area, provided that the restaurant portion outside of the separate restaurant bar area shall be a non-smoking area. Within one year of the effective date of this ordinance, the operator, manager or owner of any restaurant bar shall cause the restaurant bar area to be separated with

a separate HVAC system from the remainder of the restaurant as required in this ordinance or the restaurant bar shall be smoke-free.

(3) No portion of a restaurant having only a restaurant license, as described in Section 60-6A-4 NMSA 1978, shall qualify as a non-restaurant bar or as a restaurant bar.

**BOWLING ALLEY CONCOURSE.** An area, such as is customarily found in bowling alleys, that is not in the direct area commonly referred to as the settee (where the bowling activity is performed), but rather as an overlook area.

**COMMON AREA.** Any enclosed area designated or otherwise allowed to be used for the mutual enjoyment of the general public or for customers or patrons in general.

**DINING AREA.** Any enclosed area containing a counter or tables upon which meals are provided. Any outdoor dining area is excluded.

**EMPLOYEE.** Any person who is employed by an employer in consideration of direct or indirect wages or profit, and any person who volunteers his or her services to a nonprofit entity.

**EMPLOYER.** Any person, partnership, corporation, including municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

**ENCLOSED AREA.** Any area closed in by a roof, and solid walls except for windows, doorways, and passageways.

**MAYOR.** The Mayor or his designated representatives.

**PLACE OF EMPLOYMENT.** An enclosed area under the control of an employer intended for occupancy by employees during the course of their employment, including, but not limited to, work areas, lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, classrooms, auditoriums, hallways, stairways, waiting areas and rest rooms.

**PRIVATE CLUB.** Any nonprofit group, including fraternal organizations, and an auxiliary or subsidiary group organized and operated under the laws of this state with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars per year and who, under the constitution and bylaws

of the club, have all voting rights and full membership privileges, and which group is the owner or lessee of premises used exclusively for club purposes; and which group is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and the club has been granted an exemption by the United States from the payment of federal income tax as a club under the provisions of Section 501 of the Internal Revenue Code of 1986, as amended.

***PUBLIC PLACE.*** Any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or other use of the area. A private residence is not a "public place" unless it is used as a child care, adult day care, or healthcare facility.

***PUBLIC TRANSIT DEPOT.*** An enclosed area for the purchase of tickets, boarding or public waiting for the use of public transportation.

***RESTAURANT.*** Any coffee shop, cafeteria, private and public school cafeteria or eating establishment, and any other eating establishment which gives or offers for sale food to the public, patrons or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere, except that the term "restaurant" shall not include a non-restaurant bar and the area designated as the bar meets the requirements of a restaurant bar as defined in this ordinance. No portion of a restaurant having only a restaurant license, as described in Section 60-6A-4 NMSA 1978, shall qualify as a non-restaurant bar or as a restaurant bar.

***RETAIL TOBACCO STORE.*** A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

***SMOKEFREE.*** That there shall be no smoking within an enclosed area.

***SMOKING.*** Inhaling, exhaling, or burning any lighted cigar, cigarette, pipe or other combustible tobacco product.

('74 Code, § 6-5-4) (Ord. 50-1988; Am. Ord. 76-1989; Am. Ord. 14-2003)

#### **§ 9-5-5-5 PROHIBITION OF SMOKING IN PUBLIC PLACES.**

Subject to the exceptions provided in §§ 9-5-5-1 et seq., smoking shall be prohibited in all public places within the city including, but not limited to, the following:

(A) Elevators.

(B) Buses and other means of public transit under the authority of the city; taxicabs; and ticket, boarding, and waiting areas of public transit depots; provided, however, that this prohibition does not prevent the establishment of enclosed separate waiting areas for smoking.

(C) Restrooms.

(D) Those public places within shopping malls, business establishments, office buildings, offices, retail stores, banks, sports arenas, aquariums, galleries, libraries, and museums.

(E) Restaurants.

(F) Bingo playing rooms where the bingo games are licensed under the New Mexico Bingo and Raffle Act; provided, however, this prohibition shall not apply to a separate area or areas within the playing rooms designated as smoking areas that contain a maximum of 70% of the enclosed area seating capacity of the establishment.

(G) Any public place which is primarily used for, or designed for the primary purpose of exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke on a stage or a motion picture or television set when such smoking is part of a stage, motion picture or television production.

(H) Every room, chamber, place of meeting or public assembly under the control of the city during such time as a public meeting is in progress.

(I) Waiting rooms, hallways, wards and patient rooms of health facilities and public places housing health related meetings open to the public, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices, except when prescribed for patients in patient rooms of hospitals by physician's order, or allowed by an organization responsible for organizing meetings or

functions open to the public which have as their primary purpose the treatment of, or recovery from substance abuse or addiction.

(J) Polling places during city elections.

(K) All common areas of the Albuquerque Convention Center. If a private party leases either the entire Convention Hall or Exhibit Complex, that party shall be allowed to determine the smoking regulations for the duration of their lease for those areas.

(L) All Albuquerque airports. The smoking and non-smoking requirements established in this ordinance for bars and restaurants shall apply to bars and restaurants located in airports. All offices and exclusive leasehold areas within the airports which are not public places will abide by smoking regulations herein established for places of employment.

(M) Bowling alley establishments, other than bowling alley concourses designated as smoking areas.

(N) The grounds and all buildings within the Albuquerque Biological Park including the Rio Grande Zoo, Aquarium and Botanical Gardens.

(O) Licensed child care and adult day care facilities.

(P) At least 75% of guest rooms in hotels and motels shall be designated as smokefree.

('74 Code, § 6-5-5) (Ord. 50-1988; Am. Ord. 76-1989; Am. Ord. 14-2003)

#### **§ 9-5-5-6 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.**

(A) It shall be the responsibility of employers to provide that their places of employment meet the requirements of §§ 9-5-5-1 et seq.

(B) Each employer having a place of employment located within the city shall adopt, implement, post and maintain a written smoking policy which shall provide that all common work areas, conference and meeting rooms, offices, lobbies, reception areas, auditoriums, classrooms, elevators, hallways, medical facilities and restrooms shall be smokefree.

(C) No provision herein shall prevent an employer in a business otherwise exempted from regulation under the provisions of this ordinance from providing that the entire place of employment shall be smokefree, or soliciting the opinions of all the employees in the place of employment by poll, vote, or other appropriate method, regarding the further restriction of smoking in the place of employment.

('74 Code, § 6-5-6) (Ord. 50-1988; Am. Ord. 76-1989; Am. Ord. 14-2003)

#### **§ 9-5-5-7 REGULATION OF SMOKING.**

(A) Within two months of the effective date of §§ 9-5-5-1 et seq. [i.e., October 12, 1988], all public places will be smokefree except in areas designated in accordance with §§ 9-5-5-1 et seq.

(B) Within two months of the effective date of §§ 9-5-5-1 et seq. [i.e., October 12, 1988], all employers shall establish a smoking policy in accordance with §§ 9-5-5-1 et seq.

('74 Code, § 6-5-7) (Ord. 50-1988; Am. Ord. 76-1989)

#### **§ 9-5-5-8 WHERE SMOKING NOT REGULATED.**

Notwithstanding any other provision of §§ 9-5-5-1 et seq. to the contrary, the following areas shall not be subject to the restrictions of §§ 9-5-5-1 et seq.:

(A) Non-restaurant bars.

(B) Retail tobacco stores.

(C) Enclosed areas within restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while being used for private functions; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this ordinance.

(D) Private clubs.

(E) Private residences, except when used as a licensed child care, adult day care or health facility.

(F) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than

25% of rooms rented to guests in a hotel or motel may be so designated.

('74 Code, § 6-5-8) (Ord. 50-1988; Am. Ord. 76-1989; Am. Ord. 14-2003)

#### **§ 9-5-5-9 POSTING OF SIGNS.**

(A) "Smoking" or "No Smoking" signs, or other signs indicating smoking restrictions, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it shall be posted where it is clear, conspicuous and easily legible in all areas where smoking is regulated by §§ 9-5-5-1 et seq., by the owner, operator, manager or other person having control of such building or other place. Such signs shall also be placed at all outdoor entrances to such areas.

(B) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

(C) Every restaurant shall have posted at every public entrance a conspicuous sign clearly stating the smoking policy of the restaurant, such as whether a nonsmoking section is available.

('74 Code, § 6-5-9) (Ord. 50-1988; Am. Ord. 76-1989)

#### **§ 9-5-5-10 BUILDINGS THAT HOUSE MULTIPLE BUSINESSES.**

The owner or manager of a building that houses multiple businesses located in the same building shall be responsible for declaring public places therein smokefree.

('74 Code, § 6-5-10) (Ord. 50-1988; Am. Ord. 76-1989)

#### **§ 9-5-5-11 ENFORCEMENT.**

(A) Enforcement of §§ 9-5-5-1 et seq. shall be by citation from the Fire Department or the Police Department or other agency designated by the Mayor.



(B) Notice of the provisions set forth in this ordinance shall be given to all applicants for a business license in the City of Albuquerque.

(C) Any person may register a complaint under this ordinance to initiate enforcement with the designated City of Albuquerque enforcement agency.

(D) The designated enforcement agency may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.

('74 Code, § 6-5-12) (Ord. 50-1988; Am. Ord. 14-2003)

#### **§ 9-5-5-12 INSPECTION OF PREMISES; VIOLATION NOTICES.**

(A) Whenever necessary to make an inspection to enforce any of the provisions of §§ 9-5-5-1 et seq., or whenever the Mayor has reasonable cause to believe that there exists in any building or upon any premises any violation, the Mayor may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Mayor by §§ 9-5-5-1 et seq., provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Mayor or his designated representative shall proceed to obtain a search warrant or other appropriate legal authorization by filing a verified petition with the Metropolitan Court or District Court. The petition shall:

(1) Set forth the particular building, premises or portion thereof sought to be inspected;

(2) State that the owner or occupant of the building, premises or portion thereof, has refused entry, or cannot be located in order to obtain right of entry;

(3) State that inspection of the building, premises or portion thereof is necessary to determine whether it complies with the requirements of §§ 9-5-5-1 et seq.;

(4) Set forth the particular provisions of §§ 9-5-5-1 et seq. sought to be enforced;

(5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the building, premises or portion thereof which constitutes a violation of §§ 9-5-5-1 et seq.;

(6) State that the Mayor is authorized by the city to make the inspection.

(B) When the Mayor shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, are or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Mayor for the purpose of inspection and examination pursuant to §§ 9-5-5-1 et seq.

('74 Code, § 6-5-13) (Ord. 50-1988; Am. Ord. 76-1989)

#### **§ 9-5-5-13 VENTILATION AND SEPARATION REQUIREMENTS.**

(A) *Existing ventilation.* The existing HVAC systems located in all restaurant bars shall be adjusted to assure that the return flows are at a maximum level for the removal of smoke. Such adjustment shall include, but not be limited to relocation of HVAC system exhaust units when insufficient ventilation exists. The city's Chief Building Official shall determine the sufficiency of such existing HVAC systems. Owners, managers and operators of restaurant bars shall make such HVAC system adjustments as of the effective date of this ordinance. The HVAC system adjustments required in this paragraph shall not include the separation of HVAC systems during the first year after the effective date of this ordinance.

(B) *Ventilation transition period.* All premises on which smoking is allowed shall be renovated to meet the HVAC system requirements established by the city's Chief Building Official. To the extent such requirements established by the city's Chief Building Official exceed the HVAC system capabilities that exist on a premises, the owners, managers and operators of businesses and organizations existing and operating a premises that includes a smoking area at the time this ordinance goes into effect shall meet the city's Chief Building Official's HVAC system requirements within one year after the effective date of this ordinance. The minimum HVAC system that shall be installed within one year of the effective date of this ordinance, shall be separate from any other premises or business.

(C) *New and renovated premises.* Owners, managers and operators of businesses and organizations operating on premises that include a smoking area that begin the operation of business or the organization's activities on a premises after the effective date of this ordinance shall comply with the HVAC system requirements of the city's Chief Building Official prior to the use of such premises, including installation of a HVAC system that is separate from that of any other business or premises. This requirement shall apply to both new and renovated premises for which a city issued building permit is required. Compliance with the HVAC system requirements established by the city's Chief Building Official shall be a condition for receiving a certificate of occupancy.

(D) *Separation of smoking areas.* Within one year of the effective date of this ordinance, the operator, manager or owner of all restaurant bars shall cause the restaurant bar area to be separated from the remainder of the restaurant by solid walls that extend from the floor to the ceiling. All passageways into the restaurant bar area shall have solid doors that shall be closed when not in use. The operator, manager or owner of a restaurant bar who does not meet these separation requirements shall not allow smoking in any portion of a restaurant bar upon the expiration of one year after the effective date of this ordinance.

(Ord. 14-2003)

#### **§ 9-5-5-14 REASONABLE DISTANCE.**

Smoking is prohibited within a reasonable distance outside any entrance, including doors, windows, and ventilation system openings of an establishment where smoking is prohibited. A separate outdoor smoking area may be established, providing that patrons are not required to walk through the smoking area to gain entrance to the business, and that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.

(Ord. 14-2003)

#### **§ 9-5-5-15 REGULATIONS.**

The Mayor may promulgate rules and regulations to implement the provisions of this ordinance.

(Ord. 14-2003)

#### **§ 9-5-5-16 NONRETALIATION.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this ordinance or reports or attempts to prosecute a violation of this ordinance.

(Ord. 14-2003)

#### **§ 9-5-5-98 VIOLATIONS.**

(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under §§ 9-5-5-1 et seq. to violate any of its provisions. The owner, manager or operator of any premises subject to regulation under §§ 9-5-5-1 et seq. shall not be subject to a penalty because any person therein is in violation of §§ 9-5-5-1 et seq., so long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the individual that he is in violation of §§ 9-5-5-1 et seq.

(B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of §§ 9-5-5-1 et seq.

(C) The Mayor, in addition to other remedies, may institute an action or proceeding to enjoin, restrain, correct or abate the violation of §§ 9-5-5-1 et seq.

('74 Code, § 6-5-11A,B,D) (Ord. 50-1988; Am. Ord. 76-1989)

#### **§ 9-5-5-99 PENALTY.**

Any person who violates any provision of §§ 9-5-5-1 et seq. shall be guilty of a petty misdemeanor punishable by:

(1) A fine of one hundred dollars (\$100) for the first violation of this ordinance within any consecutive twelve month period.

(2) A fine of two hundred dollars (\$200) for a second violation of this ordinance within any consecutive twelve month period.

(3) A fine of five hundred dollars (\$500) for the third and each subsequent violation of this ordinance within any consecutive twelve month period.

('74 Code, § 6-5-11C) (Ord. 50-1988; Am. Ord. 76-1989; Am. Ord. 14-2003)